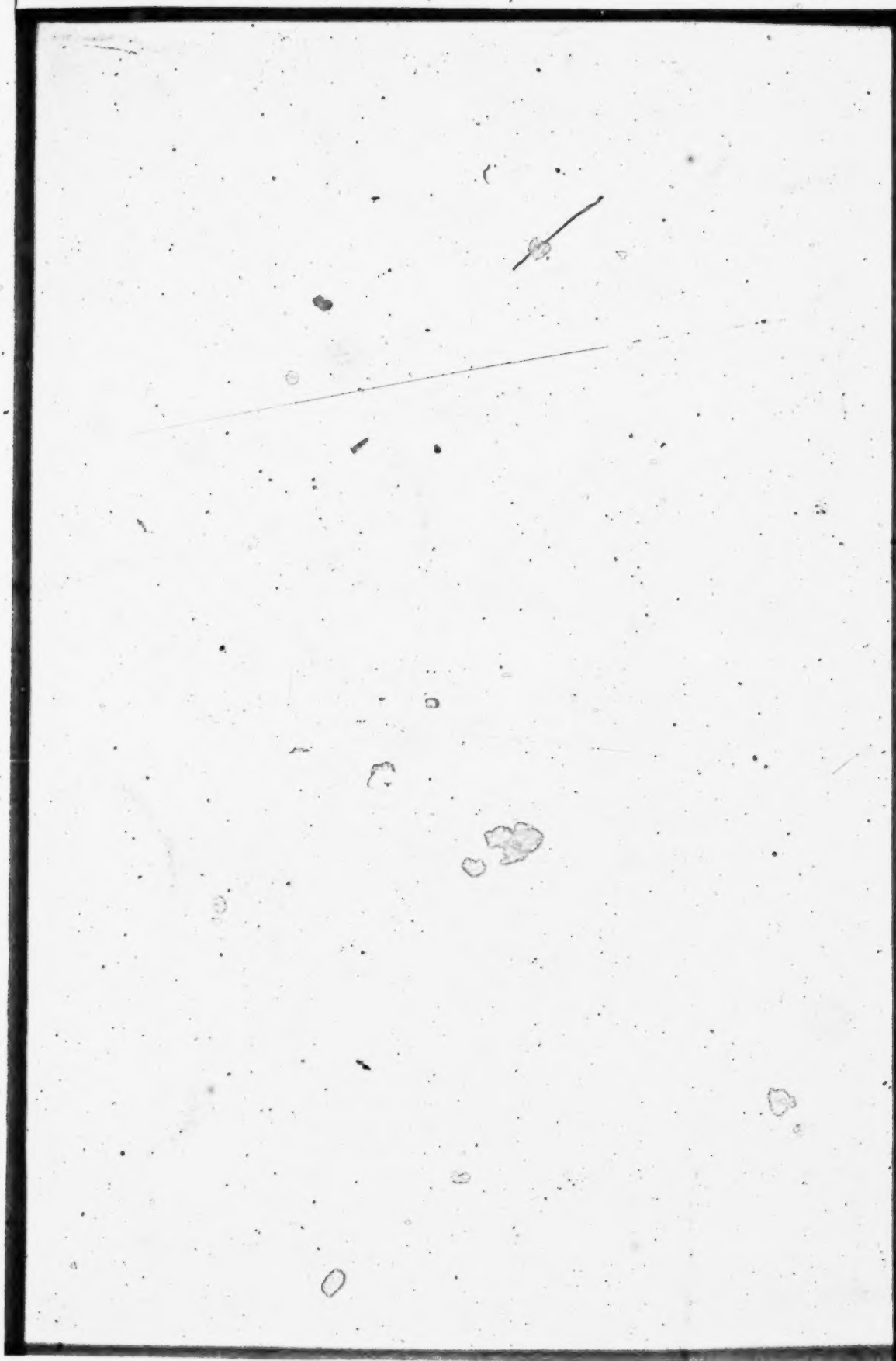

LIBRARY
SUPREME COURT, U. S.

FILED
OCT 25 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 570

SNELLING AND SNELLING OF BALTIMORE, INC.,
Petitioner,

v.

ANGELO R. MASCARO,
THE A. S. ABELL COMPANY,
AND
THE C. & P. TELEPHONE COMPANY OF MARYLAND,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF RESPONDENT, ANGELO R. MASCARO IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

AMBLER H. MOSS,
WILLIAM R. DORSEY III,
Counsel for
Angelo R. Mascaro,
Respondent.
10 Light Street,
Baltimore, Md. 21202

October 23, 1968.

The Daily Record Co., Baltimore, Md. 21203

INDEX

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	1
STATEMENT	2
ARGUMENT:	
I. None of the grounds for certiorari as set out in Supreme Court Rule 19 exist in this case	9
1. The effect of Drossner's conduct was both briefed and argued below	10
2.a. Decision in a case on a legal theory not raised, argued or briefed by the parties does not constitute denial of due process	11
2.b. The estoppel point was only an alternative grounds for the decision	12
II. The case was decided correctly on the merits below	15
CONCLUSION	17

TABLE OF CITATIONS

Cases

Department of Mental Hygiene of California v. Kirchner, 380 U.S. 194, 198 (1965)	14
Fox Film Corporation v. Muller, 296 U.S. 207, 210 (1935)	14
Kares v. Maryland, 215 Md. 396, 137 A. 2d 712 (1958)	11
Klinger v. State of Missouri, 13 Wall. 257, 263 (1872)	14
Layne and Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393 (1923)	9
McGoldrick v. Compagnie Generale Transatlantique, 309 U.S. 430 (1940)	12
N.A.A.C.P. v. Alabama, 360 U.S. 240 (1959)	12

PAGE

Walling v. General Industries Co., 330 U.S. 545 (1947) 12

Wiener v. United States, 357 U.S. 349 (1958) 12

Miscellaneous

State Court Decisions and the Supreme Court, 31 Penn. Bar Ass'n Q. 393, 399-400 (1960) 14

Supreme Court Practice, 264 (3rd Ed.) 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 570

SNELLING AND SNELLING OF BALTIMORE, INC.,
Petitioner,

v.

ANGELO R. MASCARO,
THE A. S. ABELL COMPANY,
AND
THE C. & P. TELEPHONE COMPANY OF MARYLAND,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND.

BRIEF OF RESPONDENT, ANGELO R. MASCARO IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED

Should the Supreme Court grant certiorari when the decision of the state court below is not in conflict with any other decision, presents no issue of public importance, raises no federal question, is significant to the litigants only, is supportable on non-federal grounds, and was correctly decided on the merits?

STATEMENT OF THE CASE

Snelling and Snelling, Inc. (referred to as "Philadelphia Snelling" in the opinion below and hereafter) is a Pennsylvania corporation, engaged in the employment agency business, which licenses franchisees to establish Snelling and Snelling offices in designated areas throughout the country. At the time of the trial there were approximately 280 licensed Snelling and Snelling franchisees throughout the United States, Canada, and Argentina (E. 74, 186, 193, 496).[1] The company originated as a family partnership in June, 1950, trading under the name Snelling and Snelling, and was incorporated in 1956 under the name of Snelling and Snelling, Inc. (E. 187-188). The first franchise was sold in December of 1955 (E. 188). The corporation is still a family corporation (E. 186-187).

In connection with its licensing of franchisees, Philadelphia Snelling grants to its licensees the right to open employment offices within certain designated area, and to use, in connection with that office, the registered trade name "Snelling and Snelling" and the registered "Fort Snelling" trademark (E. 189, 206, 208, 218-219, 239). Philadelphia Snelling gives its licensees detailed training in all phases of the employment agency business and provides manuals setting out the proper methods and the procedures of operating under the Snelling system to be followed by Snelling franchisees (E. 76, 81-84, 126-128, 138-140, 212, 214, 241). Letterhead, invoices and forms of every kind are standard-

---

[1] "E." refers to the Joint Record Extract filed in the Court of Appeals of Maryland, part of the record certified by that Court to this Court;

"R." refers to the Record herein;

"P." refers to the Petition;

"Apx." refers to the Appendix to this Brief;

"P. Apx." refers to the Appendix to the Petition.

ized, designed by Snelling, and purchased by the licensees (E. 81, 136, 331-335, 473, 484-489).

Under their contracts, licensees are limited in essentially only two respects: (a) location of office in designated area only, and (b) advertisement restricted to media that substantially serves the area where licensee's office is located (E. 208). Aside from these restrictions on the operation of their business, licensees are permitted to place applicants or service employers anywhere in the country (E. 208).

Many of the numerous Snelling franchisees are in locations suburban to major cities which also contain a licensed franchisee (E. 194-197). Frequently these suburban offices are not owned by the person who owns the city franchises (E. 194-197). In these cases the franchisees located in close proximity advertise in the same local newspapers (E. 194-197).

In early 1960, Maynard Z. Drossner, the President of Snelling and Snelling of Baltimore, Inc., Petitioner herein, called Mr. Robert O. Snelling, President of Philadelphia Snelling, and expressed interest in obtaining a franchise (E. 72, 205). When Drossner first approached Mr. Snelling there were between forty and fifty licensed Snelling and Snelling franchises throughout the country, located mostly east of the Mississippi and in the northeastern quadrant of the United States (E. 73, 74, 190, 240). There was a Snelling and Snelling office in the City of Philadelphia which was run by Philadelphia Snelling (E. 187, 190-193). In addition, there were two or three Snelling and Snelling offices in the suburbs of Philadelphia, all of them owned by different individuals, and all advertising and using the name "Snelling and Snelling" in the Philadelphia newspapers (E. 74-76, 190-193, 206-208, 231-232).

After considering the Philadelphia suburbs and Atlantic City as possible locations for a franchise, Drossner expressed interest in Baltimore (E. 208-209). Snelling had had a prior licensee in the State of Maryland and Baltimore, and this was disclosed to Drossner (E. 77, 209). The prior licensee had been granted a contract which allowed him to open an office within Baltimore City and the following surrounding counties; Howard, Queen Anne, Baltimore, Harford, Carroll, Kent and Anne Arundel (E. 210, 497-502). Robert Snelling testified that a copy of the prior licensee's contract was shown to Drossner (E. 210). The franchise price paid by the first licensee in Baltimore and the aforementioned counties was $12,000. Drossner admitted that he knew that this prior licensee's franchise fee was substantially higher than what he was being asked to pay (E. 77).

Before signing a contract, Mr. Snelling told Drossner that he would be buying the right to put an office in the City of Baltimore, but that he could place people anywhere in the world where he could find a company willing to employ them (E. 210-212). His advertising would be limited to the media in the Baltimore City area (E. 212). Mr. Snelling testified that there was no discussion of the suburbs of Baltimore City except to say that no suburbs would be included as distinguished from the previous licensee's territory (E. 211, 264).

On July 5, 1960, the contract between Snelling and Snelling of Baltimore, Inc., Petitioner, the corporation formed by Drossner, and Snelling and Snelling, Inc., Philadelphia Snelling, was signed. The agreed franchise price was $2,000.00. Included in the terms of the contract was the following provision:

> "1. (a) SNELLING hereby grants to LICENSEE the exclusive right to use the name SNELLING and

> SNELLING and/or SNELLING and SNELLING OF BALTIMORE, INC. in connection with one office only to be opened by LICENSEE in Baltimore, Maryland. LICENSEE shall not directly or indirectly establish an office or place of business, or move to any locations outside of such territory; nor shall LICENSEE change its name without first obtaining the written consent of SNELLING; nor shall LICENSEE establish any branch or additional office without the written consent of SNELLING" (E. 386).

Mr. Snelling testified that he explained the meaning of paragraph 1(a) quoted above as granting to Petitioner the exclusive right to open one office within the City limits of Baltimore, and that Baltimore Snelling could place people anywhere, but would have to advertise in media which served Baltimore (E. 212).

After opening his office in Baltimore City, Drossner then expressed interest in establishing offices in other cities and in Silver Spring, Maryland, Arlington and Alexandria, Virginia, suburbs of Washington (E. 92, 215, 294). At this time Drossner knew that there was a licensee in Washington, D.C. (E. 92, 215-216, 264-265).

In 1962, Drossner approached Snelling about opening an office in Towson, Maryland (E. 219-220, 447-448). According to Mr. Snelling no contention was made by Drossner initially that Towson, Maryland was within the territory outlined in Baltimore Snelling's contract (E. 220, 447-450). Initially, the parties could not agree on the price of such franchise (E. 220, 447-450). In 1963 Drossner wrote to Mr. Snelling and contended that the City of Towson was already within the territory granted him in his contract of July 5, 1960 (E. 220-221, 454-455). Mr. Snelling immediately wrote back denying this (E. 221, 458-460). Mr. Snelling testified that this was the first time Drossner made this contention (E. 220-221). On January 28, 1964, Drossner

and a partner named Stanley Sackett entered into a licensing agreement with Philadelphia Snelling authorizing a Snelling and Snelling office to be opened in Towson, Maryland (E. 223, 395-409). This contract was assigned by Sackett and Drossner to a newly formed corporation, Snelling and Snelling of Towson, Inc. (E. 409-414). The franchise fee was $3,000 (E. 223, 448-449).

Also in 1963 Drossner expressed interest in opening offices in the surrounding suburbs of Baltimore (E. 454-455). Dundalk-Essex was one of the areas in which he showed an interest (E. 223). Eventually he made an offer to open an office in Dundalk-Essex for a franchise fee of $2,000 (E. 91, 223). Mr. Snelling testified that the price for that franchise was $7,800 and Drossner's offer was rejected (E. 223-224).

In 1963 Drossner formed another corporation, Snelling and Snelling of Highlandtown, Inc. On December 20, 1963, this corporation contracted for the opening of a second office within the limits of Baltimore City (E. 414-430). No franchise fee was charged. On June 14, 1965, still a fourth corporation in which Mr. Drossner has an interest, Snelling and Snelling of Glen Burnie, Inc., executed a contract for a franchise in Glen Burnie, Maryland (E. 430-447). The franchise fee was $2,600 (E. 434).

At the time of the execution of these contracts Drossner, with his wife, had a 50% interest in Snelling and Snelling of Baltimore, Inc., Snelling and Snelling of Glen Burnie, Inc., and alone had a 50% interest in Snelling and Snelling of Towson, Inc. (E. 87-90). However, his partners in each were different (E. 87). Bert H. Cohen and his wife were 50% stockholders in Baltimore Snelling (E. 87), Stanley Sackett was a 50% stockholder in Towson Snelling (E. 87), and Robert Cobaugh was a 50% stockholder in Glen Burnie

Snelling (E. 90). Drossner and his wife were sole stockholders of the Highlandtown corporation (E. 90).

Respondent Mascaro first became interested in becoming a Snelling and Snelling licensee in September or October of 1965 (E. 115). On November 4, 1965, Mascaro entered into a licensing agreement with Philadelphia Snelling which granted him permission to operate an employment agency in the Dundalk-Essex area and to use the name Snelling and Snelling in connection therewith (E. 121). The francise fee was $7,800 (E. 470).

After the execution of Mascaro's contract, Drossner contacted Mascaro for the purpose, as Mascaro testified, of "scaring Mascaro off" (E. 174). Mascaro sought reassurance from Philadelphia Snelling that he was not encroaching on anyone's legal rights and could operate in accordance with his contract, and was so assured repeatedly by Philadelphia Snelling (E. 131-133, 143-146, 170-171, 224-263). Mascaro did not know at this time that Drossner had, in the past, attempted to purchase a franchise for Dundalk-Essex (E. 174).

Mascaro opened his office on January 2, 1966 (E. 130). The operation of Mascaro's business is done primarily from his office and by telephone (E. 166-167, 183-184). He advertises in the Baltimore Sun and News Post as does Petitioner and the other Snelling licensees (E. 167, 284-285). Drossner also advertises over WBAL-TV and WBAL radio (E. 44-45, 285, 290-291). Through this medium Petitioner's advertisements reach Hagerstown, Frederick, Bethesda, Silver Spring, Falls Church, Alexandria, Arlington and Washington, D. C. (E. 508-511). Other Snelling licensees with whom Petitioner has no connection have licensed these cities from Philadelphia Snelling (E. 496, Defendant's Exhibit 38).

The Trial Court in an opinion filed on December 6, 1966, found that Petitioner had no common law right to the use of the name of Snelling and Snelling and that its right to use the name derived from its license agreement with Philadelphia Snelling. It further found that the phrase Baltimore, Maryland in the contract between Petitioner and Philadelphia Snelling meant Baltimore City. However, the Court went on to find that by virtue of its contract Petitioner had the exclusive right to the use of the name "Snelling and Snelling" in Baltimore City, and, therefore, while not denying Respondent Mascaro the right to the use of the name "Snelling and Snelling", the Court enjoined Mascaro from using the name unless he added a suffix to distinguish him from Petitioner. It was from this decree that the Respondent Mascaro appealed. Petitioner filed a cross appeal claiming that Mascaro should have been enjoined altogether.

On May 31, 1968, the Maryland Court of Appeals filed an opinion and entered its judgment reversing the decree of the Circuit Court Number 2 of Baltimore City and vacating the injunction imposed upon Mascaro by that Court. The main basis of that Court's decision (and its disagreement with the Court below) was that, as argued by Respondent Mascaro, Petitioner did not have the contract rights it claimed. The Court held that under the terms of the contract, Philadelphia Snelling retained (and, therefore, could license to Respondent Mascaro) the right to use the name "Snelling and Snelling" in ways not connected with the Baltimore office (P. Apx. 12-13). The Court also indicated that because of the conduct of Drossner, Petitioner was "estopped" from the relief it sought. Respondent Mascaro had argued, both orally and in his brief, that the conduct of Drossner supported its version of the meaning of the contract (Apx. 1a-5a).

ARGUMENT

I.

NONE OF THE GROUNDS FOR CERTIORARI AS SET OUT IN SUPREME COURT RULE 19 EXIST IN THIS CASE.

None of the possible grounds for certiorari are present in this case. Essentially the case involves a state court judgment resolving a dispute between private litigants concerning the interpretation of contract rights of the Petitioner. The case has no importance to any one but the litigants and, indeed, Petitioner hardly contends so. As such, it is not a case in which certiorari should be granted. As Mr. Chief Justice Taft, speaking for a unanimous Court, stated in *Layne and Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923):

> ". . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals."

See also *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70 (1955), where Mr. Justice Frankfurter, speaking for this Court again, reaffirmed the aforegoing language from the *Layne* case and further stated that the Supreme Court does not "sit for the benefit of the particular litigants."

Aggrieved by the decision against it below and lacking better argument, Petitioner attempts to create a "federal question" where none exists. The sole thrust of the Petition is that one of the bases of the decision of the Court of Appeals of Maryland was a ground that was not raised, considered, briefed, or argued below. This "ground" upon which Petitioner claims it had no notice and opportunity

to be heard, was that because of the conduct of one of its principals, Drossner, Petitioner was estopped to claim the relief which it sought in the case.

Petitioner is not entitled to a writ of certiorari because (1) the question of the conduct of Petitioner's principal Drossner and its effect on the interpretation of the contract was raised, briefed and argued by Respondent Mascaro; and (2) even assuming that the Petitioner is correct, and the estoppel point was never briefed or argued below, (a) this does not constitute a denial of due process as claimed by Petitioner and (b) the estoppel point was only an alternative ground for decision, the main basis for decision being the Court's agreement with Respondent's interpretation of the contract under which Petitioner did not have the rights it claimed.

1. *The effect of Drossner's conduct was both briefed and argued below.*

The very basis of Petitioner's application for a writ of certiorari, that the estoppel point was not raised, argued or briefed below (a point also made by the dissenting judge) is factually incorrect. The estoppel theory is based on the acts of Petitioner's principal Drossner (P. Apx. 19-20). The argument that the interpretation of Petitioner's contract should be consistent with the actions of Drossner and Petitioner was raised in Respondent's Answer to the Bill of Complaint (E. 15-16), was urged before the Trial Court, and argued and briefed before the Maryland Court of Appeals. The portion of Respondent Mascaro's brief below that covered this point is reprinted in the appendix herein (Apx. 1a-5a). While the "estoppel" nameplate was not placed on this ground by Respondent in support of its position, it was urged by Respondent throughout the entire case. Thus, there is no federal question because, contrary

to Petitioner's contention, the consequences of Drossner's and Petitioner's actions with respect to the construction of Petitioner's contract were presented to the court for determination and were both argued and briefed before the Maryland Court of Appeals.

2. a. *Decision in a case on a legal theory not raised, argued or briefed by the parties does not constitute denial of due process.*

Even assuming that the estoppel point was never raised, briefed or argued as Petitioner contends,[2] this does not constitute a denial of due process. Maryland Rule of Procedure 885 provides that the Court of Appeals "will not *ordinarily* decide any point or question which does not plainly appear to have been tried and decided by the lower court; . . ." (Emphasis added). Thus, by this rule the Maryland Court of Appeals *may* consider points not raised below. In *Kares v. Maryland,* 215 Md. 396, 137 A. 2d 712 (1958), the Court stated:

> "Although Rule 885 of the Maryland Rules permits us to decide questions not tried and decided below, under some circumstances, it does not authorize us to decide points not presented."

In any event, a distinction should be made between points to be decided and theories on which decisions are made. The point to be decided in the case between Petitioners and Respondent was the legal right Petitioner obtained under its contract with Philadelphia Snelling. This was the point decided by the Trial Court in Baltimore City, and the point decided by the Maryland Court of Appeals. Petitioner's complaint is with one of the theories upon which the Maryland Court decided the case. Due process

---

[2] As is pointed out *supra,* at p. 10, this contention by Petitioner is vigorously contraverted.

does not require that a court agree with the theories propounded by either side in determining a point or question raised before it. Indeed, this Court may consider any grounds for sustaining a judgment below even if those grounds were not raised below. Stern and Gressman, *Supreme Court Practice* 264 (3rd Ed.); see *Walling v. General Industries Co.*, 330 U.S. 545 (1947); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430 (1940). This Court may even consider points not raised in the brief in opposition to the petition. See, *e.g.*, *Wiener v. United States*, 357 U.S. 349 (1958); *N.A.A.C.P. v. Alabama*, 360 U.S. 240 (1959).

In any event by raising the question through its Petition for reargument, Petitioner has, in effect, presented it for determination by the Maryland Court of Appeals, which has again not agreed with Petitioner's version as evidenced by its denial of the petition for reargument.

b. *The estoppel point was only an alternative grounds for the decision.*

The estoppel point does not constitute the only basis for the Maryland Court of Appeals' decision against Petitioner and in favor of Respondent Mascaro. Respondent's basic arguments went to the construction of the contract language which granted Petitioner its Snelling and Snelling franchise. Specifically the contract language which had to be construed by the Court was as follows:

> "1. (a) SNELLING hereby grants to LICENSEE the exclusive right to use the name SNELLING and SNELLING and/or SNELLING and SNELLING OF BALTIMORE, INC. in connection with one office only to be opened by LICENSEE in Baltimore, Maryland. LICENSEE shall not directly or indirectly establish an office or place of business, or move to any locations outside of such territory; nor shall LICENSEE change

its name without first obtaining the written consent of SNELLING; or shall LICENSEE establish any branch or additional office without the written consent of SNELLING."

Respondent contended that by this language Petitioner had the exclusive right to open a Snelling and Snelling office within Baltimore City, but that this did not preclude Respondent from opening an office outside of Baltimore City and advertising in media serving Respondent's area, even if these media were also being used by Petitioner. In support of his contention Respondent pointed to the plain language of the contract, the conversations between Drossner and Mr. Snelling prior to and leading up to the execution of the contract by Petitioner, the acts and conduct of Drossner and Petitioner subsequent to the execution of the contract and the workings of the "Snelling system" which was known by both Drossner and Petitioner.

The Maryland Court of Appeals agreed with Respondent's contentions as to the construction of the contract and rejected Petitioner's. The Court stated:

> "We agree, however, with the appellant's argument, that the grant of an 'exclusive' right to use the name 'Snelling and Snelling' *in connection with one office in Baltimore* is not an unrestricted right. Philadelphia Snelling retained a right, and could assign to others the right, to use the name in Baltimore in ways not connected with the Baltimore office. To hold otherwise would give rise to the conclusion that Baltimore Snelling might, if it wished, prevent Philadelphia Snelling from advertising in national magazines which circulated in Baltimore. This was clearly not intended by anyone." (P. Apx. 12-13).

Thus, the Maryland Court of Appeals, as its main basis for decision, accepted Respondent's arguments as to how the contract should be construed. The estoppel point was

only an alternative grounds and was so recognized by the dissenting judge who stated:

> "In the majority opinion, as an alternative ground for reversing the Chancellor's decree it is indicated that Baltimore Snelling is equitably estopped from challenging the validity of the licensing system which Drossner 'used to his own advantage when he obtained the Towson and Glen Burnie franchises and from attempting to impose upon Mascaro limitations with respect to communications media he did not assert against Towson and Glen Burnie." (P. Apx. 25).

Accordingly, no grounds for certiorari exist where, as here, adequate non-federal grounds supporting the decision below exist. As has been stated by Mr. Justice Brennan:

> "*Third*, even then we may not take the case if the state court's judgment can be sustained on an independent ground of state law." Mr. Justice Brennan, *State Court Decisions and the Supreme Court*, 31 Penn. Bar Ass'n Q. 393, 399-400 (1960).

This Court has expressed the rule in even stronger terms to the effect that the Court has jurisdiction to review "only if the federal ground had been the *sole* basis for the [state court] decision. . . ." *Department of Mental Hygiene of California v. Kirchner*, 380 U.S. 194, 198 (1965); *Klinger v. State of Missouri*, 13 Wall. 257, 263 (1872); *Fox Film Corporation v. Muller*, 296 U.S. 207, 210 (1935).

Thus, even if the decision of the Maryland Court of Appeals on the estoppel point is assumed to raise a federal question as Petitioner contends (and which Respondent vigorously denies, see pp. 10-11, supra), this Court still does not have jurisdiction to review and should not grant a writ of certiorari because of the existence of adequate non-federal grounds to support the decision of the Maryland Court of Appeals.

II.

THE CASE WAS DECIDED CORRECTLY ON THE MERITS BELOW.

The key to Petitioner's case is that it contends that its contract with Philadelphia Snelling gives it the exclusive right to use the name "Snelling and Snelling" in Baltimore City. The Maryland Court of Appeals correctly determined, in construing the Petitioner's franchise contract, that it had no such right. The key sentence of Petitioner's contract reads: "Section 1(a) Snelling hereby grants to Licensee the exclusive right to use the name Snelling and Snelling and/or Snelling and Snelling of Baltimore, Inc., in connection with one office only to be opened by Licensee in Baltimore, Maryland" (E. 386). Baltimore Snelling's "right to use the name" is only a right to use it in connection with one office in Baltimore, Maryland. The phrase does not say that Petitioner has the exclusive right to use the name in Baltimore, Maryland, but only the exclusive right to use the name in connection with one office in Baltimore, Maryland. The phrase "Baltimore, Maryland" does not modify "exclusive right to use the name" but indicates where the location of the office is to be placed. Even within Baltimore, Petitioner has no unrestricted right to use the name. He may not use it in Baltimore other than in connection with "one office only". This is the plain meaning of the language and is made further obvious by the additional portion of Section 1(a) which specifically denies to Baltimore Snelling the right to open "any branch or additional office" (E. 386). Since the right to use the name in Baltimore other than in connection with an office located there was not granted to Petitioner it was obviously retained by Philadelphia Snelling, the owner of the tradename, and can be granted to others by Philadelphia Snelling, including Respondent Mascaro.

Petitioner contends that if it was not granted the exclusive right to the use of the name in Baltimore City, then the word "exclusive" in the contract is being given no effect. This is not so. Just what is the exclusivity of the grant to Petitioner in its contract? The exclusivity results from the fact that Philadelphia Snelling cannot place another licensee in an office within Baltimore City. This is the limitation on Philadelphia Snelling and the grant to Petitioner, that is, the assurance that no other Snelling and Snelling franchisee could be granted a franchise for an office within the City of Baltimore. Respondent Mascaro's contract does not grant him the right to place an office in Baltimore City but only in a designated portion of Baltimore County (E. 467-468). This is where his office is located.

In agreeing with Respondent Mascaro's construction of the contract, the Maryland Court of Appeals indicated that to hold otherwise would give rise to the conclusion that Petitioner might, if it wished, prevent Philadelphia Snelling from advertising in national magazines which are circulated in Baltimore and stated that this was clearly not contended by anyone (P. Apx. 12-13). Additionally, the Court pointed to the fact that Drossner obtained franchises in Towson and Glen Burnie, which advertised in the same news media as Petitioner and that to permit Drossner and Petitioner to limit Respondent Mascaro when he had not so limited Towson and Glen Burnie "would be to sanction the weaving of the very web of broader exclusivity *which he failed to achieve by contract*" (Emphasis added) (P. Apx. 20). For this and other reasons raised by Respondent below, it is apparent that the case was correctly decided on the merits below, an additional reason why certiorari should not be granted.

CONCLUSION

For these reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

AMBLER H. MOSS,

WILLIAM R. DORSEY III,

Counsel for
Angelo R. Mascaro,
Respondent.

October 23, 1968.